IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) CIVIL MISC. APPEAL No. 364 of 2005

NATIONAL INSURANCE CORPORATION
V/S
SOHAN LAL SANGHVI

(2) CIVIL MISC. APPEAL No. 361 of 2005

NATIONAL INSURANCE CORPORATION
V/S
SOHAN LAL SANGHVI & ORS

(3) CIVIL MISC. APPEAL No. 622 of 2000

GUJRAT STATE ROAD TRANSPORT CORPORATION
V/S
SOHAN LAL SANGHVI & ORS

Mr. JAGDISH VYAS]
Mr. B.S.BHATI], for the appellants.

Mr. RAJESH PANWAR, for the respondents.

Date of Order : 1.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

These three appeals arise out of the common judgment of the Motor Accident Claims Tribunal, deciding two claim petitions, one being for the death of Smt.Hulasi Devi, and the other being for the personal injuries, sustained by Sohan Lal. It may be noticed that the appeal filed by the Gujarat State Road Transport Corporation (hereinafter referred to as the "Corporation") against the award for the death of Hulasi Devi, being S.B.Civil Misc. Appeal No.818/2000, has already been dismissed by this Court vide order dated 11.9.2000 considering that the

claim was filed under Section 163-A, and the findings recorded by the learned Tribunal on the question of income could not be successfully assailed. However, the two appeals No.364 and 361 are by the insurer of the auto-rickshaw, wherein the victims were passengers, and appeal No.622 is by the Corporation challenging the award of compensation with respect to personal injury.

Suffice it to say that so far as the appeals of the Insurance Company are concerned, the challenge is only to the quantum and negligence, but then it is not in dispute that the insurer was not granted permission under Section 170 of the Motor Vehicles Act. In that view of the matter, in view of the judgment of Hon'ble the Supreme Court in Chinnama George & Ors. Vs. N.K. Raju & Anr., reported in 2000 ACJ 777, which in turn follows the earlier judgment of Hon'ble the Supreme Court in Narendra Kumar Vs. Yarenissa, reported in 1998 ACJ 244 (SC), the present appeal even if filed by joining the owner also is not maintainable.

Thus, the appeals of the insurer are dismissed as not maintainable in view of the aforesaid judgment of Hon'ble the Supreme Court.

Coming to the appeal of the Corporation, it was contended by learned counsel for the appellant that the accident was out-come of sole negligence of the tempo driver, and there was no negligence on the part of the bus driver, inasmuch as, the bus driver had brought the bus to a complete halt seeing the auto-rickshaw coming from the opposite direction, and realising that the road was already dug, still since the auto-rickshaw was coming at a fast speed, and driver of which suddenly noticed the excavation on the road, with the result that he could not control the vehicle, and banged in the bus. Thus, the Corporation could not be held liable. For considering this submission, I have gone through the record, and find that there is a glaring variance between

pleading and proof on the part of the Corporation, inasmuch as, in para-27(ख) of the reply, the stand taken is that the defendant no.1 did not cause any accident by his bus No.GJ 18P 1403, details are pleaded in the additional pleas. Coming to additional pleas, all that is pleaded is that the driver when came in front of the Post Office, he found that the road is excavated for laying pipeline, and is without any marks to indicate the danger, therefore, he brought the bus to a complete halt. In the meanwhile, the auto-rickshaw came in the fast speed, and the driver could not immediately notice the excavation, therefore, in order to avoid the excavation, he brought the auto-rickshaw on the wrong side, and hit the stationary bus, whereby only headlight of the bus was damaged, and front bumper got mild dent. It was then pleaded that on account of the auto-rickshaw applying brakes immediately, it lost balance, and the passengers fell down on the road. This is the whole explanation of the accident. As against this, the suggestion given to the victim, eye-witness, A.W.1 on cross-examination by the Corporation, and the victim has maintained that the accident was not on account of sole negligence of the three-wheeler driver, rather the bus was also coming at a fast speed. He has denied the suggestion about the bus being stationary, and the three-wheeler having dashed against the bus in the process of avoiding the excavation. On the other hand, the driver, N.A.W.1, had yet different story to depose viz., that he had brought the bus to a complete halt, then the auto-rickshaw came in a full speed unmindful of the excavation, and in that process, the three-wheeler turned turtle, and rolled down 3-4 times, and touched the headlight of the bus. Significantly, in cross-examination, he has again shifted his stand by deposing that the tempo hit the hip of the earth, and overturned towards the side of the bus, and that the tempo did not hit the bus, rather it was on account of the tempo overturning that the passengers received injuries. With this state of pleadings and evidence, a look at the site plan, and site inspection note available on record as Ex.4 shows that the accident occurred on the road leading from East to West, whereon the bus was coming from West to East, and

the tempo was coming from East to West. On that road, the accident is said to have occurred on point-A, where the broken pieces of glass are lying. According to site plan, the point-C to C, being the Southern part of the road measures 10 feet, and is excavated. With this, it has also noticed in the site inspection note that the total width of the road is 18 feet. Thus, it is clear that the bus was occupying the remaining 8 feet portion of the road as is shown in the site plan also. Obviously thus irrespective of the question that the driver had brought the bus to a complete halt, or not, admittedly when the driver had noticed the auto-rickshaw coming from the opposite direction, and as admitted by the driver that he was aware of the excavation at the spot, as he had come on the road last evening itself, even on seeing the auto-rickshaw, he did not leave any space for the reasonable passage for the auto-rickshaw. That apart, so far as the stand about the bus having been brought to a complete halt is concerned, a look at the site plan shows that it has been found that there are tyre skid marks of the bus on account of application of brakes, to the extent of 15 feet towards the East on the road from the place of accident, while the skid marks of the tyres on account of application of brakes of the tempo have also been found, to the extent of about 10 feet distance. Availability of these tyre skid marks, coupled with the space available on the road, in view of the the excavation, it is reasonable to conclude that both the vehicles practically, simultaneously applied the brakes, and in view of the excavation on the road, the tempo driver had no option but to avoid the excavation, and the bus driver had 8 feet portion of the road, and 6 feet portion of the footpath available towards further North, and therefore, when he had noticed the auto-rickshaw, he could take reasonable step to avert the accident. Thus, in my view, the finding recorded by the learned trial Court about both the drivers being negligent in causing the accident cannot be said to be vitiated.

The next submission made is that the quantum of compensation

awarded is excessive. The learned Tribunal has awarded a sum of Rs.20,64,000/- by way of compensation. A look at the record shows that the claimant, A.W.1, the victim has clearly deposed that on account of the accident his spine, face, jaw were seriously damaged, the injury report is Ex.20, looking to the seriousness, he was referred to Jodhpur by ambulance which costed Rs.1000/-. Then from Jodhpur looking to the seriousness he was referred to Madras, dispatch ticket whereof is Ex.21, and looking to the urgency, he was taken by plane alongwith one attendant, Doctor, and brother, which costed them Rs.90,000/-. The bills of the aeroplane have been produced on record as Exs.118 to 121. Then he was operated number of times, and on account of sustaining sensation nerve injuries, both his lower limbs became impaired altogether. He got unsuccessful in passing excretion and urine apart from the fact, that the passage of urine was obstructed, and is required to be acquainted by catheter, his tongue was impaired for long time, which was improved by plastic surgery. However, he is rendered permanently total disable, for which he has produced the discharge summary, being Exs.22 to 25. Various X-Ray reports, and prescriptions, so also the bills for expenditure have been produced, and proved. Then he has proved the expenditure to be incurred in keeping one attendant round the clock, so also a cook, on which he spent Rs.15,000/- per month. Then one person is kept for cleaning, and sanitation. Then a physiotherapist is also engaged. He has also deposed that these expenditures will have to incur by him for whole life. Then he has proved his income to be Rs.15,000/- per month, for that purpose, he has produced the income tax return of the year 1993-94 to 1995-96, which shows the gradual increasing return, and the last return shows the income to be Rs.1,82,000/-.

The learned Tribunal has considered the documents, and the evidence. Significantly, there was no cross-examination to the claimant, whether on the aspect of his having suffered total permanent disablement, or on the aspect of the documents of expenditure produced

by the claimant.

The learned trial Court during the submission has put a note that the witness has been brought on wheel chair with the assistance of two persons, and is having catheter, and urine bag, and the statements had been recorded while keeping sitting on the wheel chair only. In these circumstances, the learned Tribunal has awarded the expenditure under different heads on actual's basis, and reasonable assessment for the future expenditure for the attendants, and maintenance.

Then regarding loss of income, it is found that even on applying multiplier of 15, considering the age of the victim to be 40 years, multiplied by the last income tax return, even leaving apart future prospects of the increase, the figure comes to more than Rs.27 lakhs, but then, in view of the claim filed, the loss of income has been confined to Rs.10 lakhs only. In these circumstances, in my view, may be that the round figure of 20 lakhs may sound to be high, but then, examining the details, it does not appear to be excessive either.

Learned counsel for the appellant then challenged the rate of interest. With the consent of learned counsel for the claimant, it is directed that the amount of compensation awarded shall carry interest at 10% instead of 12%.

The appeal of the Corporation is accordingly dismissed with the modification with the rate of interest only.

All the three appeals are dismissed/disposed of in the above terms.

(N P GUPTA),J.

/tarun/